

The Legal Basis for Contract Interpretation Under Iraqi and Iranian Law

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ABSTRACT

This study aims to examine the legal basis for contract interpretation under Iraqi and Iranian law and to analyze the rules and criteria relied upon by judges in ascertaining the parties' true intentions and determining the meaning of contractual terms. It also examines the role of statutory provisions, Islamic jurisprudence, and custom in the interpretive process, while identifying the similarities and differences between the two legal systems.

The significance of this study lies in assessing the adequacy of the legislative framework governing the interpretation of contracts in both countries and in examining its impact on ensuring the stability of transactions and protecting contractual intent. The study adopts both the descriptive-analytical and comparative approaches by analyzing relevant legal provisions and jurisprudential rules and comparing their application under Iraqi and Iranian law.

The study concludes that both legal systems recognize the importance of the parties' intentions and customary practice in interpreting contracts. However, Iraqi law is distinguished by the existence of more direct and comprehensive provisions governing contractual interpretation. Iranian law, by contrast, relies on a body of dispersed provisions that operate in conjunction with custom and Islamic jurisprudence. This framework affords judges greater flexibility in addressing ambiguity, omissions, and inconsistencies, while their interpretive authority remains constrained by the requirement not to contravene statutory provisions or alter the substance of the contract.

The study further concludes that there is a need to develop and refine the interpretive rules under both legal systems in order to enhance the clarity and predictability of judicial standards and provide greater protection for legitimate expectations and stability in contractual relationships.

Keywords: Contract interpretation, parties' intention, good faith, Iraqi law, Iranian law.

INTRODUCTION

The contract is one of the most important sources of obligations in civil law. It is based on the agreement of two or more parties with the aim of creating reciprocal rights and obligations, the performance of which depends upon the clarity of the contract's terms and the determination of its legal effects. However, the language used in a contract may sometimes be ambiguous or susceptible to more than one interpretation. In such circumstances, contract interpretation becomes a legal necessity for ascertaining the parties' true intentions and determining the meaning intended by its terms and provisions. Accordingly, both Iraqi and Iranian legislation have sought to establish legal foundations governing the process of contractual interpretation, thereby striking a balance between respecting the parties' contractual autonomy, on the one hand, and ensuring transactional stability and protecting legal rights and positions, on the other.

The research problem therefore lies in determining the adequacy of the legal foundations adopted by the Iraqi and Iranian legislators in regulating the interpretation of contracts, as well as the extent to which the applicable legal rules are capable of addressing cases involving ambiguity, inconsistency, and omissions in contractual language. The research also examines the limits of judicial authority in interpreting contracts and the extent to which judges are required to ascertain the parties' common intention. Furthermore, the problem concerns the extent to which the two legal systems differ with respect to the sources and rules of contractual interpretation, and whether such differences result in divergent outcomes reached by the courts when interpreting contracts.

The significance of this research derives from the fact that contract interpretation constitutes a fundamental stage in determining the scope of the obligations arising from a contract. The soundness of the interpretive process directly affects the protection of the parties' intentions, the achievement of contractual justice, and the stability of transactions. The comparative dimension of this study is also significant because it identifies the similarities and differences between Iraqi and Iranian legislation and assesses the extent to which each system has succeeded in establishing clear legal standards governing contractual interpretation. This may contribute to enriching legal scholarship and providing insights that can assist in developing the rules governing the interpretation of contracts.

The research aims to examine the legal basis upon which contract interpretation rests under Iraqi and Iranian law and to analyze the rules and criteria governing the judge when determining the intended meaning of contractual terms, with particular emphasis on the relationship between interpretation and the parties' common intention. It also seeks to compare the positions of the two legal systems with regard to the sources and limits of interpretation and the mechanisms employed to resolve ambiguity and inconsistency, ultimately identifying their respective strengths and shortcomings and proposing measures that may enhance the effectiveness of the legal framework governing contract interpretation.

Accordingly, this study adopts the **descriptive-analytical approach** by analyzing the legal provisions, judicial decisions, and relevant rules governing contract interpretation under Iraqi and Iranian law, and by examining their content and legal effects. It also employs the **comparative approach** to identify the similarities and differences between the two legal systems and to assess the adequacy of their respective legal foundations.

Section One: The Legal Basis of Contract Interpretation under Iraqi Law

The legal basis of contractual interpretation constitutes the foundation upon which the understanding and determination of the meaning of contracts rests under the Iraqi Civil Code. The true intention of the contracting parties cannot be ascertained without reference to the rules and provisions established by the legislator to regulate the interpretive process and guide the judge in determining the parties' common intention, while preventing ambiguity and inconsistency in the interpretation of contractual obligations.

The first requirement: Statutory Provisions Governing Contract Interpretation under the Iraqi Civil Code

The Iraqi legislator has not left the matter of contractual interpretation to uncontrolled judicial discretion. Rather, a set of general rules has been established to provide a legal framework governing and directing the interpretive process toward achieving the true purpose of the contract, namely, giving effect to the common intention of the contracting parties.

First: The Principle of Respect for the Parties' Intention in Contract Interpretation

Contract interpretation is fundamentally based on respecting the intention of the contracting parties, as their intention constitutes the essential element in the formation of the contract and in determining its content. A contract comes into existence only upon the concurrence of the parties' wills, and its provisions cannot be properly understood without ascertaining the parties' true intention.

Accordingly, the Iraqi legislator has accorded particular importance to the parties' intention in the interpretive process and has treated it as the primary criterion for determining the meaning intended by contractual terms and obligations. In this regard, this section examines the concept of the parties' intention and its position under the Iraqi Civil Code. It then addresses the priority of the parties' actual intention over the literal meaning of the words used in the contract, as well as the limits of contractual intention and the restrictions imposed upon it, including **public policy and good faith**. It also considers the effect of respecting the parties' intention in achieving contractual justice, protecting rights, and preventing abuse.

In this way, the general framework of this principle in guiding the process of contractual interpretation becomes clear. A view expressed in Iraqi civil-law scholarship is that **Article 155 of the Iraqi Civil Code**¹, which is derived from the jurisprudential rule set out in **Article 3 of the Majallat al-Ahkam al-Adliyyah**, does not mean that the Iraqi legislator has adopted the doctrine of subjective intention or hidden intention. Rather, the provision means that, when interpreting a contract, the judge may not confine himself to the literal wording of its provisions. Instead, the judge must seek to ascertain the parties' common intention². At its core, a contract is founded upon the parties' will and the legal authority accorded to it. This is expressed through the **principle of party autonomy**, under which the will of the contracting parties constitutes the fundamental basis for creating contracts and determining their legal effects. Accordingly, the parties' intention plays the predominant role in establishing the contractual relationship and determining its content.³

The parties are free to create whatever contracts they wish, without being restricted to the types of contracts regulated by the legislator in the Civil Code, which are known as nominate contracts. They also have the freedom to determine the effects of the contract. They are not limited to the effects prescribed by the legislator; rather, they

¹ Article 155 of the Iraqi Civil Code, which provides:

"1. In contracts, consideration shall be given to the purposes and meanings, rather than to the words and forms.
2. The general rule is that words shall be understood according to their literal meaning; however, where the literal meaning is impossible, the figurative meaning shall be adopted."

² Kadhim Hamadi Yusuf, 2019, "The General Theory of Implied Intention: A Comparative Study," *Journal of Legal Sciences*, College of Law, University of Baghdad, Special Fifth Issue (Faculty Research with Postgraduate Students), p. 9.

³ Mustafa Al-Zalam, *Lectures on the Theory of Obligation in Islamic Jurisprudence*, University of Baghdad, publication year not stated, p. 76.

may narrow or expand those effects, or even exclude some of them, according to the interests of the parties. The freedom of will also extends to modifying the effects of the contract after it has been concluded and to terminating it after its formation. This confirms the central role of will in contractual relations and demonstrates the broad scope of its authority in regulating legal relationships⁴.

The principle of party autonomy is discussed by dividing it into two parts. The first is referred to as the principle of party autonomy in terms of form, while the second is referred to as the principle of party autonomy in terms of substance. In explaining the first part, emphasis is placed on the sufficiency of the parties' will to create a legal act and give rise to obligations, without requiring it to be expressed in a particular form. All that is required is that the will be expressed, regardless of the form in which it is expressed, whether through words, writing, gestures, or otherwise.⁵

Article 75 of the Iraqi Civil Code⁶ provides a general rule that defines the scope of the subject matter of a contract. The legislator provides that a contract may concern any subject matter, provided that the subject is not legally prohibited and does not contravene public order or public morals. This is intended to allow individuals the freedom to enter into contracts and determine their obligations without restriction, but within the limits established by law for the purpose of protecting society and its values. If the subject matter of the contract contravenes an express legal provision, the contract is void because the law does not protect an act that violates its provisions. Likewise, a violation of public order renders the contract unlawful, since public order represents the rules upon which the state and society are founded, and no agreement may be made that undermines them. Similarly, a violation of public morals leads to the invalidity of the contract, as public morals represent the ethical values accepted by society, and agreements that conflict with them are not permitted. Accordingly, freedom of contract under Iraqi law is not absolute; rather, it is subject to the requirement of respecting the law, public order, and public morals to preserve social stability and protect the interests of individuals. All of this operates within the principle of consensualism between the parties. Article 85 of the Civil Code establishes a fundamental principle governing contracts: a contract is not concluded unless the other party accepts the offer made to them in a manner that corresponds to it. In other words, the acceptance must fully conform to the terms of the offer, without modification or alteration. Any change to the essential terms constitutes a new offer rather than an acceptance. This rule ensures complete concurrence between the wills of the contracting parties, an essential condition for genuine consent and the creation of a legally binding obligation. If the other party accepts on different terms, the contract is not concluded; instead, the response is treated as a new offer awaiting acceptance by the first party.

The parties' intention may also be expressed in two forms when expressing acceptance or undertaking an obligation: **express intention and implied intention**. Express intention is that which is clearly communicated, whether through words, writing, commonly understood gestures, or through actual exchange, known as *ta'ati* (conduct-based exchange), where the intended meaning is directly understood without the need for interpretation. Implied intention, by contrast, is not expressed directly but is inferred from material conduct or a particular act surrounded by circumstances and conditions that permit the intention to undertake an obligation to be inferred. Although implied intention does not, in itself, expressly indicate the intention, it is no less significant than express intention in producing legal effects when the conduct in question is sufficient to indicate the existence of an intention to contract or undertake an obligation. Accordingly, the law recognizes the legal value of both forms of expressing intention to ensure the stability of transactions and facilitate dealings among individuals.

Under the Iraqi Civil Code, contractual intention constitutes the essence of the contract and the basis of consent. The formation of a contract requires the concurrence of two or more wills directed toward producing a specific legal effect. A contract is not based merely on an internal desire, but rather on an expressed will that is manifested externally and communicated to the other party. Intention, as a psychological element, is not sufficient in itself to create a contract unless it is manifested externally through one of the means of expression recognized by law. This is because the law does not give effect to an intention existing solely within a person's mind; rather, it relies upon the declared intention embodied in tangible manifestations that can be perceived by others⁷.

Accordingly, the contractual intention to which the law gives legal effect is the **objective or expressed intention**, rather than the internal intention. This is consistent with the **theory of objective intention**, which the Iraqi legislator has adopted. Article 73 of the Civil Code defines a contract as the concurrence of two wills, confirming

⁴ Ramadan Muhammad Abu Al-Saud, *Principles of Obligations in Egyptian and Lebanese Law*, Al-Dar Al-Jami'iyyah, 1984, p. 25.

⁵ Abd al-Mun'im Faraj Al-Sadda, 1958, *Lectures on Civil Law (The Theory of Contract in the Laws of Arab Countries)*, Vol. 1, Consent, Cairo, p. 9.

⁶ Article 75 of the Iraqi Civil Code provides: "A contract may validly concern any subject matter, provided that the obligation relating to it is not prohibited by law or contrary to public order or public morals."

⁷ Muhammad Siddiq Muhammad Abdullah, 2012, *The Objectivity of Contractual Intention: A Comparative Analytical Study*, Dar Al-Kutub Al-Qanuniyyah, Cairo, Egypt, p. 133.

that what matters in contracting is not what a person conceals internally, but rather what is clearly expressed in a manner that demonstrates the person's intention to undertake an obligation.⁸

The formation of a contract under the Iraqi Civil Code is based on the conformity of the wills of the contracting parties, as manifested in the offer and acceptance. It requires the internal intention of each party to correspond to the same meaning expressed by the external manifestation of that intention. Mere external expression is therefore insufficient unless it corresponds to what the person actually intends internally. Such conformity serves as a safeguard for achieving genuine consent between the contracting parties and preventing a contract from being established on a purely formal basis. Furthermore, the receipt of an offer or acceptance by the person to whom it is addressed constitutes a legal presumption that the person is aware of its contents. It is presumed that, once the expression of intention has reached the person concerned, that person has had access to and understood it. In this way, the necessary communication between the two wills is established, and the contractual relationship is formed. This principle seeks to ensure stability in transactions and prevent parties from evading their obligations on the grounds of ignorance or lack of knowledge.

Another important point concerns the conformity between the offer and acceptance and the effect of agreement on the essential matters required for the formation of a contract. The Iraqi legislator regulates this matter under Article 86 of the Civil Code, which addresses the conformity of acceptance with the offer and determines when a contract is considered validly concluded.

Paragraph 1 provides that, for a contract to be concluded, the parties must agree on all the essential matters that were the subject of negotiation. Essential matters refer to those fundamental elements without which the contract cannot exist, such as the price and the subject matter in a contract of sale. Agreement on only some of these matters, without agreement on the others, is insufficient for the conclusion of the contract and does not create an obligation for either party, even if such agreement has been made in writing, because a written document cannot compensate for the absence of complete consent.

Paragraph 2 addresses the situation in which the parties have agreed on all the essential matters of the contract while leaving certain details to be agreed upon at a later stage, without stipulating that the failure to reach agreement on those details would prevent the formation of the contract. In such a case, the contract is considered to have been concluded and validly formed. If a dispute subsequently arises concerning the details on which no agreement was reached, the court shall determine those matters in accordance with the nature of the contract, the provisions of the law, custom, and the requirements of justice. This provision aims to facilitate transactions and prevent contracts from being rendered ineffective because of secondary matters that can be resolved judicially.⁹

The Iraqi legislator also addressed, under Article 87 of the Civil Code, the issue of contracting between absent parties and determined the time and place in which the contract is concluded in such circumstances. The provision establishes that the contract is considered concluded at the place and time when the offeror becomes aware of the acceptance, unless there is an express or implied agreement, or a legal provision providing otherwise.

This indicates that the legislator has adopted the **principle of knowledge of acceptance** in determining the moment at which the contract is concluded, rather than relying merely on the issuance or dispatch of the acceptance, in order to achieve legal certainty and stability in transactions. Paragraph 2 of the article further presumes that the offeror becomes aware of the acceptance at the place and time when it reaches them. This presumption constitutes a legal presumption intended to prevent the denial of an obligation on the grounds of lack of knowledge or delay in becoming aware of the acceptance.¹⁰

Second: The Role of Contractual Terms and Expressions in the Interpretive Process

Contractual terms and expressions play a fundamental role in determining and interpreting the content of a contract. However, the Civil Code makes clear that the significance of the wording is not absolute; rather, it is subject to considerations relating to the parties' intention and their actual purpose. The wording alone may reflect the apparent meaning of the contract, but in some cases the meaning may be modified where it becomes clear that

⁸ Article 73 of the Iraqi Civil Code provides: "The concurrence of the offer made by one of the contracting parties with the acceptance of the other in a manner that establishes its legal effect upon the subject matter of the contract."

⁹ Article 86 of the Iraqi Civil Code provides: "1. Acceptance corresponds to the offer if the parties agree on all the essential matters that they have negotiated. Agreement on some of these matters is not sufficient to bind the parties, even if the agreement is established in writing. 2. If the parties agree on all the essential matters of the contract and reserve certain details to be agreed upon at a later stage, without stipulating that the contract shall not be considered concluded in the absence of agreement on those matters, the contract shall be considered concluded. If a dispute arises concerning matters on which no agreement has been reached, the court shall determine them in accordance with the nature of the subject matter, the provisions of the law, custom, and justice."

¹⁰ Article 87 of the Iraqi Civil Code provides: "1. A contract between absent parties shall be considered concluded at the place and time when the offeror becomes aware of the acceptance, unless there is an express or implied agreement or a legal provision providing otherwise. 2. The offeror shall be presumed to have become aware of the acceptance at the place and time when it reaches them."

the parties' actual intention differs from the literal meaning of the terms. The interpreter or judge relies on the apparent meaning of the wording where it is consistent with the parties' intention and clearly defines their obligations. However, where the apparent meaning conflicts with the parties' actual intention or with the circumstances surrounding the contract, the law permits the interpreter to go beyond the literal wording in order to ascertain the parties' actual intention. Thus, contractual wording is not a final criterion in itself; rather, it is a means of expressing the parties' intention, and its significance depends on the extent to which it is consistent with their common intention.

A conflict in contracts arises when there is a discrepancy between the literal meaning of the wording and the parties' actual intention. Some provisions of a contract may appear clear and specific when considered in isolation, but upon closer examination, it may become apparent that there is a conflict between those provisions or between the actual intention of the parties and what is expressed in the wording. In such cases, legal interpretation seeks to resolve this conflict in a manner that reflects the common intention of the contracting parties.¹¹

If, for example, the seller undertakes in certain provisions of the contract to disclaim liability for specific defects in the subject matter of the sale, while other provisions stipulate that the seller is responsible for covering other types of defects, the judge must interpret these provisions in an attempt to reconcile them with the parties' actual intention. If this is not possible, preference is given to the provision that more clearly reflects the parties' true intention, based on the general rule established by Article 155 of the Iraqi Civil Code, which affirms that contracts are governed by the intentions of the contracting parties and not merely by their wording.

This rule confirms that the parties' true intention may be inferred from the words, contractual expressions, and outward manifestations, but it is not confined to them. Rather, the context, the conduct of the parties, and the outcome of the contract may also be taken into consideration in determining the true intention. Where there is a conflict between printed provisions and provisions written by hand, the handwritten provision is given precedence because it generally reflects a more recent agreement or a modification of the parties' original intention, particularly where the printed provision was the subject of discussion or disagreement between the parties.

In this way, the law strikes a balance between adherence to the apparent wording of the contract and giving effect to the parties' true intention, ensuring that contracts reflect the parties' actual purpose rather than merely their express terms, while taking into account stability and fairness in transactions.

Furthermore, relying on contractual words and expressions in the interpretive process does not mean rigidly adhering to their formal boundaries. Rather, they must be understood within the general context in which they appear and in light of the contractual relationship as a whole. A contract constitutes an integrated whole and may not be fragmented for the purposes of interpretation. Accordingly, its provisions must be read comprehensively and coherently, so that each provision is interpreted in light of the other provisions.

The second requirement: The Role of Islamic Jurisprudence and Custom in Guiding Interpretation

Allah Almighty says: **"Take what is given freely, enjoin what is customary, and turn away from the ignorant."**¹²

The contract is regarded as one of the fundamental concepts in Islamic jurisprudence, and jurists have defined it in various ways. Abu Bakr al-Jassas stated that a contract has two meanings. The first refers to an obligation undertaken between two parties, as in sale, marriage, and other contracts of exchange, whereby each party binds himself to perform what he has agreed to. The second refers to an obligation undertaken by one party alone, such as an oath or a vow, whereby a person binds himself to do or refrain from doing something in the future.

It may be observed that many jurists, when defining a contract, confine it to the meaning based on offer and acceptance, which is appropriate for contracts formed through the agreement of two wills, such as contracts of sale and lease. This, however, does not mean that they deny the existence of contracts formed by unilateral intention. This is evident from their use of the term "contract" in legal acts arising from a single will, such as an oath and divorce. This meaning is also established in the Holy Qur'an, as confirmed by the saying of Allah Almighty: **"Allah will not hold you accountable for unintentional oaths, but He will hold you accountable for the oaths you have deliberately bound yourselves to."**¹³ In other words, a binding oath is regarded as a contract.

Accordingly, a contract in Islamic jurisprudence may be divided into two types: a contract based on two or more wills, in which the offer must meet the acceptance, such as sale, lease, partnership, and other reciprocal contracts. A contract based on a single will, which is referred to in modern legal terminology as a unilateral contract, is concluded merely upon the issuance of the offer by the contracting party, thereby becoming binding upon him

¹¹ Suhair Hassan Hadi, *Legal Rules in the Interpretation of Contracts*, University of Babylon, College of Education for Pure Sciences, pp. 125–126.

¹² The Holy Qur'an, Surah Al-A'raf, verse 199.

¹³ The Holy Qur'an, Surah Al-Ma'idah, verse 89.

without the need for acceptance by another party. Examples of such contracts include an oath, a vow, a charitable endowment (waqf) in favor of an unspecified beneficiary, and a will made in favor of an unspecified beneficiary.¹⁴ As for custom, it is regarded as one of the important sources of legal rules, as it consists of the consistent practice of a particular conduct among people, accompanied by their belief in the existence of a legal sanction that ensures respect for such conduct. Custom refers to conduct that people have habitually followed on a continuous basis until it has become a binding rule. This definition is based on the presence of two elements: the material element, represented by the repetition of the practice, and the moral element, represented by the belief in the obligation to comply with such conduct under the threat of a sanction. With the combination of these two elements, custom acquires its legal character and becomes a binding rule that must be followed. The judge resorts to applying custom only in the absence of a legislative provision governing the dispute before the court, in which case custom performs a supplementary role in relation to the contract, and may result in placing the burden of an obligation upon one of the contracting parties based on the practices prevailing among people. Nevertheless, incorporating custom into the scope of the contract without appropriate controls may affect the will of the parties on the ground that there is no legal regulation governing the dispute, which may result in the imposition of obligations that were not contemplated by the contracting parties and which, had they known of them in advance, they would not have agreed to enter into the contractual relationship.¹⁵

Accordingly, the contract has remained the primary means through which people pursue and secure both their private and public interests. It ensures the protection of their rights, facilitates their transactions, and helps reduce the burdens arising from the complexity of jurisprudential and legal codification. When people develop a particular method that meets their needs and serves their interests, others are quick to follow it. Over time, that method is repeated and becomes widespread among people until it develops into a common and inherited practice. This phenomenon reflects the innate human tendency to imitate others in both word and deed and to benefit from experiences that have proven effective over time.¹⁶

Given the importance of custom as a source of law in this article, and in light of the importance of determining the scope of its application in addressing the subject matter of jurisprudential issues, it is first necessary to clarify the concept of custom itself and explain how it differs from etiquette, traditions, and matters agreed upon by reasonable people. Custom derives its binding force in legal jurisprudence from the implicit consent of society, meaning that the people themselves create and apply custom. Once practices arise and are repeatedly followed among people, a general belief develops within society that they ought to be observed, and custom becomes automatically binding as a result of the people's consensus regarding its importance and necessity in regulating their daily lives.

Many legal scholars consider custom to possess an inherent force arising from social necessities, as these necessities require the regulation of community life and the preservation of its stability. Thus, where no law exists to regulate a particular situation, as was the case in primitive societies, or where legislation fails to provide appropriate regulation in modern societies, custom emerges as a regulatory instrument that takes the place of legal provisions and provides a practical framework for achieving social order and justice.¹⁷

The judiciary is also considered one of the important foundations that gives custom its binding force in legal jurisprudence. Custom does not acquire such force automatically; rather, it requires an authority to confer upon it a legal character, and that authority is the judiciary. When disputes are brought before the courts and the judge applies custom in deciding the dispute, treating it as a rule governing social relations, custom then becomes binding. Some jurists point out that binding custom develops through the consistent practice of the judiciary in issuing particular judgments on specific matters. Such consistency gives the practices being applied the character of a legal obligation, and custom thereby becomes a binding force in social dealings.

Although some Muslim jurists have stated that there is no distinction between custom (*'urf*) and habitual practice (*'adah*) in terms of meaning, another view distinguishes between them. Custom is conduct or speech that the majority of people have become accustomed to and that has become binding upon them, whereas a habitual practice may be limited to a small group or even a single individual and does not always reach the level of being binding. Accordingly, custom is broader and more comprehensive than habitual practice, because every custom is a habitual practice, but not every habitual practice constitutes custom. Custom is therefore a collective practice

¹⁴ 'Ala' al-Din Abu Bakr ibn Mas'ud al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, 2nd ed., Beirut: Dar al-Kutub al-'Ilmiyyah, 1986, Vol. 6, p. 155.

¹⁵ Safwan Muhammad Ahmed Al-Umayri, 2024, "Problems of Contract: A Comparative Study," *Al-Shara'i Journal of Legal Studies*, Vol. 4, No. 4, College of Law, University of Tikrit, p. 719.

¹⁶ Subhi Awda Muhammad, 2022, "The Theory of Custom in Islamic Jurisprudence," *Contemporary Islamic Studies*, No. 34, December, University of Karbala, College of Islamic Sciences, p. 4.

¹⁷ Tariq Abdul-Razzaq Saeed, 2017, "The Role of Custom in Filling Legislative Gaps: A Comparative Study in Islamic Sharia," *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences*, No. 2, Year 9, pp. 719–720.

that has become established and repeatedly observed among people, whereas a habitual practice may be an individual act or one of limited prevalence and therefore does not acquire binding force.

On this basis, two types of habitual practices may be distinguished: a customary practice, which is conduct prevalent among the majority of people and has become binding, and a non-customary practice, which is conduct followed by some individuals but has not reached the level of being widespread or prevalent. This explains why Islamic jurists have treated custom and habitual practice as equivalent in meaning, and why positive laws have likewise used them as synonymous terms. The Iraqi legislator has also not distinguished between custom and habitual practice, but has used them in the same sense in several provisions of the Civil Code, such as Articles 131 and 926. The legislation has also, on occasion, used expressions such as “according to what is customary” or “in the customary manner” instead of the word “custom,”¹⁸ among other provisions of the Civil Code that have recognized habitual practices as a source of obligations and interpretation.

The binding force of custom in legal jurisprudence stems from the fact that, although custom is regarded as one of the unwritten sources of legal rules, it possesses binding force that places it in a position close to legislation in regulating social relations. This binding force is derived from several jurisprudential and legal foundations.

Custom is not merely a repeated pattern of conduct; rather, it becomes a binding rule when its repetition is accompanied by a general sense among members of society that compliance with it is obligatory. This is commonly understood as the implicit acceptance of the community. In other words, through repeatedly engaging in a particular practice and continuing to apply it, members of a community develop a general conviction that such conduct ought to be followed. This conviction gives the practice a binding character without the need for a written legal provision.

The binding force of custom is also grounded in social necessity. Practical life requires the existence of rules governing people's affairs, even in circumstances where no legislative provision exists. Society cannot function without a certain degree of normative regulation. Where legislation is unable to keep pace with all emerging circumstances and changing social realities, custom may serve as an effective means of filling legislative gaps and maintaining stability. Accordingly, many legal scholars maintain that custom develops in response to the needs of society and that its necessity is what confers upon it its binding character.

The judiciary also plays a fundamental role in giving custom legal force. Custom generally acquires practical legal significance only when courts recognize and apply it in their judgments. The consistent application by the courts of a particular customary practice in disputes brought before them contributes to its establishment as a binding rule and thereby reinforces its legal force within social and legal transactions.

Some legal scholars maintain that custom does not acquire binding force unless it is recognized by the judiciary and relied upon in the adjudication of disputes. The binding force of custom may also be derived from the implied will of the legislature. The legislature's silence regarding an established custom, coupled with its failure to object to it, may be regarded as implicit acceptance. Thus, where a particular custom becomes widely established within society and the legislature does not intervene either to abolish it or to regulate it, such inaction may be understood as legislative recognition of the custom. Consequently, the custom may acquire the status of a source of legal rules.

This approach seeks to achieve legislative flexibility and ensure harmony between the law and prevailing social practices. Accordingly, the binding force of custom in legal jurisprudence rests upon the interaction of several elements, including the acceptance of the community, social necessity, the role of the judiciary, and legislative silence. When these foundations converge, custom acquires its legal character and becomes a rule that must be observed in the regulation of social relations.¹⁹

It is therefore evident that custom is connected, at times, with fact and, at other times, with a condition or a rule of law, as illustrated below:

The Relationship Between Custom and Truth

The Iraqi legislator has regulated the relationship between custom and truth under Article 156 of the Iraqi Civil Code,²⁰ which was derived from Article 40 of the *Majalla al-Ahkam al-Adliyya* (Ottoman Mecelle). The latter provides that “truth is to be disregarded according to the indication of custom.” This means that reference must

¹⁸ Article 131 of the Iraqi Civil Code provides:

“1. A contract may be made subject to a condition that confirms or is consistent with its legal effect, or that is established by custom and prevailing practice.

A contract may also be made subject to a condition providing a benefit to either of the contracting parties or to a third party, provided that such condition is not prohibited by law and does not conflict with public order or morality. Otherwise, the condition shall be void while the contract remains valid, unless the condition was the principal inducement for entering into the contract, in which case the contract shall likewise be void.”

¹⁹ Ahmed Mohammed Ahmed Al-Zain, *Rules of Custom in Light of the Civil Law*, Department of Private Law, Faculty of Law, Shendi University, Sudan, pp. 60–62.

²⁰ Article 156 of the Iraqi Civil Code provides: “Truth is to be disregarded according to the indication of custom.”

be made to customary practice as a contextual indication for determining the intended meaning of a statement, since custom constitutes an established presumption in matters of usage. Accordingly, custom serves as an indication of the true meaning, and it may not be disregarded except on the basis of evidence to the contrary. A figurative meaning may be adopted only where the literal or true meaning cannot reasonably be maintained. Custom, however, has no effect where it conflicts with an express legal provision or other legal evidence.²¹

Truth, in this context, refers to the meaning for which a word was originally designated, and which the speaker intends to convey in the first instance. This principle constitutes one of the rules through which the intended literal meaning may be ascertained and serves as a basis for determining the meanings of words as they are used. Through custom, the intended meaning may be identified; consequently, the true meaning is not necessarily obscure but may instead be apparent from prevailing usage.²²

Article 163 of the Iraqi Civil Code regulates this relationship,²³ and the provision is derived from Articles 38, 42, 44, and 45 of the *Majalla al-Ahkam al-Adliyya* (Ottoman Mecelle). It embodies the principle that a term is interpreted broadly or narrowly according to the prevailing customary practice. In other words, the prevailing practice constitutes a contextual indication of whether a term should be understood in a restricted or unrestricted sense. The legal provision referred to above reflects a principle recognized by jurists, namely, that the circumstances surrounding a matter constitute a rational presumption to which reference may be made in determining the predominant meaning and the relevant custom.²⁴

Article 164 of the Iraqi Civil Code provides that custom is authoritative, whether general or particular.²⁵ This means that practices commonly followed by people and regarded as customary conduct within society may have legal force and may serve as a reference for interpreting legal provisions and regulating transactions. General custom refers to practices generally observed by the majority of members of society, whereas particular custom refers to practices followed by a specific group, such as merchants or the inhabitants of a particular locality. Such particular custom is authoritative within the sphere of that group.

The provision further establishes that the practices of people constitute legally relevant evidence that must be given effect. In other words, repeated and generally accepted practices may constitute legal evidence upon which reliance may be placed in interpreting contracts or resolving disputes. This reflects the importance of custom in civil law and confirms its complementary relationship with statutory provisions, thereby ensuring that legal transactions remain consistent with prevailing social realities.

This provision is derived from Articles 36 and 37 of the *Majalla al-Ahkam al-Adliyya*. The first of these principles establishes that “custom is authoritative,” meaning that customary practice may constitute a rule to be applied as a legally recognized standard. Islamic legal doctrine, in its general principles, takes customary practices into consideration and bases certain legal rulings upon them, except where the lawgiver has expressly provided otherwise. Accordingly, judges and legal authorities may rely on practices that are recurrent and familiar within society when determining the applicable custom, as such practices accurately reflect prevailing social realities and contribute to achieving justice and consistency with generally accepted practices, as further reflected in Article 165 of the Iraqi Civil Code.²⁶

Section Two: The Legal Basis for Interpretation in Iranian Legislation

The interpretation of contracts under Iranian civil law is based on clear legal foundations established by the Iranian legislator to regulate the process of interpretation and to ensure that the true meaning intended by the contracting parties at the time of concluding the contract can be ascertained. In many cases, it is not sufficient to rely solely on the apparent wording; rather, it is necessary to examine the actual meaning intended by the parties.

²¹ Fawzi Kazim Al-Mayahy, *Understanding the Iraqi Civil Law Methodologies and Their Parameters: The Theory of the Named Contract, Volume Two*, Al-Sama Press, Baghdad, 2016, p. 387.

²² Decision of the Iraqi Court of Cassation, Civil Rights Division, Decision No. 165 (Civil Rights), issued on 22 September 1968.

²³ Article 163 of the Iraqi Civil Code provides:

“1. What is recognized by custom is equivalent to a stipulated condition, and determination by custom is equivalent to determination by an express legal provision.
2. What is recognized among merchants is equivalent to a condition agreed upon among them.
3. What is customarily impossible is equivalent to what is factually impossible.”

²⁴ Decision of the Iraqi Court of Cassation, No. 1718 (Civil Rights), issued on 18 December 1963.

²⁵ Ismat Abdul-Majeed Bakr, *The General Theory of Obligations*, Part One, Cihan Private University Publications, 1st ed., Erbil, 2011, p. 402.

²⁶ Article 165 of the Iraqi Civil Code provides: “Custom shall be considered only where it is consistent and established, or predominant; consideration shall be given to what is predominant and commonly practiced, rather than what is rare.”

The First Requirement: Legal Provisions Governing Interpretation under the Iranian Civil Code

The interpretation of contracts under the Iranian Civil Code is based on a fundamental principle: respect for the intention of the contracting parties, as this constitutes the essential element in the formation of the contract and in determining its effects. Intention is the basis from which the obligation arises and determines its content. Therefore, a contract cannot be properly understood without considering the parties' actual intention at the time it was concluded. The matter is not limited to the apparent wording of the contract but extends to examining the parties' common intention and the true purpose of the agreement.

Article 190 of the Iranian Civil Code provides that the validity of a contract requires the existence of the parties' intention and consent, their legal capacity, a specified subject matter, and a lawful cause. Once these fundamental requirements are satisfied, the contract is deemed to have been validly established. Article 183 of the Civil Code is also among the most important provisions establishing the general principles in this area. As regards the formation of a contract, its basis in most civil law systems is the agreement of the parties' wills. Under Iranian law, a contract is based on consent without requiring a particular form, except in exceptional cases expressly provided for by law. A contract is normally concluded through an offer and acceptance, provided that the offer is clear and definite and that the acceptance corresponds to it without conditions. With regard to termination of the contract, the general principle under Islamic Sharia and Iranian law is that contracts are binding. Pursuant to Article 219, a contract is binding upon both parties and may not be terminated except by their mutual agreement or for a legally recognized reason.²⁷

From this perspective, contracts are divided into binding contracts, which may not be terminated except in specified circumstances and by those entitled to exercise such a right, and non-binding contracts, which either party may terminate whenever they wish. With regard to the interpretation of contracts, the Iranian Civil Code does not contain an independent framework regulating the matter. However, certain provisions, such as Articles 220 and 225, emphasize the role of custom.²⁸

Through an analysis of these assumptions, it is possible to examine the role of general principles, including the principle of generality, in interpreting contracts, resolving ambiguity, determining obligations and rights, and giving effect to the parties' intention in different types of contracts:

Ambiguity and Conflicting Contractual Provisions:

Ambiguity arises in a contract when words and expressions are unclear or capable of bearing more than one meaning, making the interpretation of the contract difficult and requiring the judge to ascertain the spirit of the contract and understand the parties' intention in order to achieve their common purpose. Ambiguity may arise where expressions are capable of both a general and a specific meaning. In such cases, neither meaning can be preferred without applying the rules of interpretation. Ambiguity may concern matters such as the right of disposition, the enforcement of guarantees, or the determination of the scope of obligations. The judge must determine what the parties intended by a particular word and whether their intention was directed toward its general or specific meaning, since an expression can bear only one meaning, and the standard of customary understanding must be adopted to determine whether the words are clear or ambiguous.²⁹

General Waiver by Specific Means in the Contract:

The issue of a general waiver by specific means arises where there is a conflict between two general grounds and another specific ground, such that it is impossible to accept or apply all of them. In such cases, resolving the conflict requires departing from the apparent generality, giving precedence to the general provision over the specific one, and accepting the general waiver by specific means for this reason. Accordingly, in the interpretation and implementation of insurance documents, specific terms take precedence over general terms. This is clearly reflected in all standard and supplementary contracts.³⁰

²⁷ Article 219 of the Iranian Civil Code provides: "Contracts concluded in accordance with the law are binding upon the parties and their successors, unless they are terminated with the consent of the parties or cease to have legal effect by virtue of a legal ground."

²⁸ Article 220 of the Iranian Civil Code provides that a contract does not merely oblige the parties to perform what is expressly stipulated therein; rather, it also binds both parties to all effects and consequences arising from the contract according to custom and practice or by virtue of law.

²⁹ Eftekhari Jahromi, Godarz, and Khorasani, Seyyed Ali, 1396 [2017–2018], "Explanation of the Principles and Rules of Commercial Litigation and Evaluation of Their Effectiveness from the Perspective of the Economic Analysis of Law," *Comparative Legal Studies*, Vol. 8, No. 1, p. 55.

³⁰ Masoud Ansari and Mohammad-Ali Taheri, 1384 [2005–2006], *Encyclopedia of Private Law*, Vols. 1 and 2, 1st ed., Tehran: Mehrab-e Fekr Publications, p. 66.

Waiver and Cancellation in the Contract:

In contracts, the issue of waiver commonly arises, unlike in legislation, where the issue of repeal is also prevalent. In other words, in contracts, the provisions and terms of the contract should be reconciled as far as possible. If a particular matter is addressed in an employment contract, all of the contract's provisions should be examined in order to determine whether there has been any waiver. However, where two contradictory terms are used in a contract, the later term, which is closer to the parties' intention, should be considered in cases of conflict, unless the term in question was used in a context to which the parties did not give sufficient attention. This often occurs in supplementary contracts, where the parties do not examine their details carefully and the client accepts the terms and conditions out of necessity. Once the contract is signed, it is self-evident that particular attention should be given to the agreed wording, as this indicates that the parties intended it to differ from the term contained in the standard form of the contract.

Clarity of Contractual Provisions:

A contract is considered clear when its provisions contain words that are understandable and readily comprehensible, enabling an ordinary person to grasp their meaning without ambiguity or multiple possible interpretations. The contractual text is clear and free from ambiguity, and the parties are therefore bound by its terms, with the apparent meaning of the text forming the basis of their obligations and agreement. Where a dispute arises concerning the interpretation of the text, the competent authority may not disregard it or give it an interpretation contrary to its apparent meaning, because preserving the apparent meaning of the contract reflects the parties' common intention and prevents manipulation of their obligations.

However, clarity of the text does not necessarily mean that the parties' intention is equally clear. Even where the wording is clear, the parties may disagree about the intention underlying a particular expression. One party may seek to establish that the apparent meaning does not reflect the parties' true intention. In some cases, the parties may use clear terms to define certain obligations; nevertheless, one of them may subsequently claim the opposite of the apparent meaning and request that another interpretation be adopted or that reference be made to another related contract. Such a claim must be proved by the party making it, since the general rule is to give effect to the apparent meaning unless the contrary is clearly proven.³¹

Defects and Omissions in the Contract:

A defect or omission in a contract occurs when the parties overlook a particular matter that has not been included in the contractual text or expressly agreed upon. This commonly becomes apparent when the obligations are being performed. It may result from the parties' failure to anticipate certain circumstances, or from an established custom of not discussing particular matters or leaving them unaddressed. It may also arise from the use of general clauses, such as good faith or the obligation to use best efforts, which indicate that the contract is incomplete. Where a dispute arises concerning a matter that has not been addressed in the contract, the competent authority must interpret the contract as a whole and examine its provisions, the circumstances surrounding it, the parties' practices, and their implied intention in order to remedy the deficiency and ascertain their true intention, without imposing anything on the parties of its own accord.³²

Limits of the Contracting Parties' Intention in Interpretation:

Good faith is an important legal concept, but at the same time, it is not a concept with a precise and clearly defined meaning. Although its meaning may initially appear simple, legal scholarship has differed considerably in seeking to establish a comprehensive and precise definition. Accordingly, legal scholarship has not settled on a single, specific definition of good faith. Nevertheless, by bringing together the various definitions, good faith may be understood as conduct based on integrity, fairness, and reasonableness, which the parties to a legal relationship expect from one another, whether they are direct parties to the relationship or third parties who become involved in, or subsequently deal with, that relationship.³³

A traditional legal principle provides that factual mistake creates a right. A factual mistake refers to an error that any person might make under the same circumstances as a result of relying on a misleading appearance. This type of mistake is protected by law to safeguard the public interest and the good faith of third parties. Accordingly,

³¹ Farahzadi, Ali Akbar, and Shamsi, Javad, 1398 [2019–2020], "The Role of the General Principle in the Interpretation of Contracts," *Private Law*, Judicial Sciences University, Vol. 3, No. 9, Serial No. 9, Winter, p. 69.

³² Parvin, Khairallah, and Mabsari, Behnam, 1386 [2007–2008], "An Examination of the Relationship between Legal Interpretation and the Interpretive Opinions of the Guardian Council," *Quarterly Journal of Public Law Studies*, Vol. 74, No. 2, pp. 944 and 764.

³³ Jafari Langroudi, Mohammad-Jaafar, 1378 [1999–2000], *Comprehensive Guide to Legal Terminology*, Vol. 3, Tehran: Ganj-e Danesh, p. 1662.

legal acts that appear on their face to be valid and lawful are recognized as such even if, in reality, they lack the legal requirements necessary for their validity.³⁴

Bad Faith:

Bad faith is defined as an insincere and unfair intention based on deception, fraud, or a desire to harm the other party. Its purpose is to obtain an unlawful benefit or to mislead others. Bad faith is a form of conduct that receives no legal protection; on the contrary, it may give rise to legal liability.

Bad faith also occupies an important position in criminal law, as it constitutes one of the essential elements of an offence and falls within what is known as the mental or moral element of the crime. A criminal conviction cannot be issued unless it is established that the offender acted in bad faith at the time of committing the act. Since bad faith is an internal matter relating to a person's state of mind and cannot be directly established or disproved, it must be established indirectly by examining the offender's conduct, the nature of the act committed, and the extent of the offender's awareness and intention when carrying it out.

A person's voluntary commission of a criminal act, without any coercion or compulsion and with knowledge of the nature of the act and its consequences, constitutes evidence of the existence of bad faith, because the conscious and voluntary performance of the act reflects criminal intent and the desire to commit the offence.³⁵

Abuse of Rights:

Abuse of rights is a clear example of conduct contrary to the principle of good faith. In some legal systems, it is defined as the improper exercise of a right in bad faith. It occurs when a person exercises a right not to achieve the purpose for which it was established, but rather with the intention of causing harm to another, pursuing an unlawful purpose, or where the exercise of the right is disproportionate to the intended result.

There is no doubt that abuse of rights constitutes an important aspect of bad faith, since abuse of a right cannot be conceived of as an act carried out in good faith. Accordingly, the relationship between the two is close, natural, and customary, as every abuse of a right presupposes the existence of bad faith on the part of the person exercising it.³⁶

Interpretation of the Contract in Emergency Circumstances:

The abuse of an emergency situation is an important form of bad faith in transactions. It refers to exploiting a person's urgent need or exceptional circumstances in order to induce them to enter into a contract that they would not have concluded under normal circumstances. From a legal perspective, an emergency contract is a contract entered into by a person under internal pressure arising from economic, social, or psychological circumstances that compel them to accept imbalanced terms. Such circumstances may result from extreme poverty, an urgent need for money, serious illness, or any other exceptional situation that places a person in a position of weakness and compels them to act contrary to their genuine wishes.

However, the Iranian Civil Code recognizes the validity of such transactions. Article 206 provides that a transaction entered into as a result of an emergency circumstance is not considered a transaction concluded under duress and is legally valid.³⁷

From a jurisprudential perspective, the principles emphasize the prohibition of causing harm and the removal of hardship and distress, as well as the elimination of emergency situations to protect affected individuals. The exploitation of emergency situations is considered unlawful. These principles seek to achieve balance and social justice, as provisions such as Article 40 of the Constitution and Articles 132 and 485 of the Civil Code protect the rights of affected individuals. The Law on the Implementation of Article 44 also establishes a framework for dealing with unfair contracts by identifying a dominant economic position and prohibiting its abuse. Articles 45(1) and 61(1) further provide that contracts arising from an abuse of power are voidable. This approach constitutes an important step toward ensuring the protection of weaker parties.³⁸

³⁴ Ali Jafari, *The Principle of Good Faith in Contracts: A Jurisprudential and Legal Study*, Institute for Jurisprudential and Legal Research, p. 48.

³⁵ Ali Jafari, *The Principle of Good Faith in Contracts*, op. cit., pp. 30–31.

³⁶ International Institute for the Unification of Private Law (UNIDROIT), *Principles of International Commercial Contracts*, translated by Dr. Behrouz Akhlaghi and Farhad Emam, p. 24.

³⁷ Article 179 of the Maritime Code, approved on 29/06/1343 [1954], archived from the original on 7 July 2019, accessed on 4/1/2026.

³⁸ Abed Mohammad, Karim Pour, Ali Abad Amin, 1404 [2025–2026], "Social Justice in Contracts: An Analysis of the Abuse of Emergency Conditions in Adhesion Contracts in Iran," Research Article, Department of Law and Jurisprudence, Institute for Humanities Research and Development, Organization for the Study and Compilation of Humanities Books (SAMT), Tehran, Iran; Department of Law, Islamic Azad University, Yasuj Branch, pp. 18–20.

Exploitation of Economic Power under Article 44 of Iranian Law and Competition Regulation:

The Law on the Implementation of Article 44 of the Iranian Constitution regulates competition protection and prevents the unlawful exploitation of economic power in the market. It aims to ensure social justice and market balance. The unlawful exploitation of economic power is defined as any improper use of dominant economic power to obtain gains at the expense of others. Article 45, paragraph (h), provides that any unlawful exploitation of economic power or the imposition of unfair contracts constitutes a violation of the law, and such contracts may be judicially annulled. This particularly includes setting prices in a manner that harms competition.³⁹

Bad Faith of a Third Party (Third-Party Fraud):

The term “manifest fraud” is not commonly used by the courts, and scholars have differed regarding the constituent elements of this type of fraud. It has not been fully and clearly defined. Nevertheless, the term is used to refer to any serious violation.⁴⁰

Good Faith in Contracts:

In contract law, the requirement of good faith and fair dealing is considered an implied term and a general presumption. The parties to a contract are required to act with integrity and fairness and may not violate the rights of the other party in order to exercise their contractual rights. Good faith is commonly included as an implied term in various types of contracts to promote compliance with contractual obligations and duties. When legal disputes arise as a result of a breach of contract, one of the parties may invoke contractual defenses for the purpose of refusing to perform its obligations.

Good Faith at the Pre-Contractual Negotiation Stage:

Good faith is one of the fundamental principles of contract law, as it serves as a standard of fair conduct between the parties during the formation and performance of contracts. The term consists of the two words “good” and “faith” and refers to the mental state of the parties concerned, characterized by honesty and commitment to their duties, adherence to accepted commercial standards, and the absence of an intention to commit fraud or benefit at the expense of conscience.⁴¹

At the stage of preliminary negotiations, each party is required to inform the other party of everything that may affect their decision. This obligation goes beyond merely answering questions accurately and honestly; it also includes the voluntary disclosure of any matters that may raise suspicion or affect the other party’s judgment. Deliberate silence regarding the existence of a defect at this stage constitutes conduct contrary to good faith. In some cases, the scope of liability at this stage may extend to holding a person accountable for the other party’s mental perceptions, as Article 413 of the Iranian Civil Code provides that if one of the parties to a contract of sale has previously seen the property and entered into the transaction on the basis of that observation, and it subsequently becomes apparent that the property does not possess the expected characteristics, that party has the right to terminate the contract.⁴²

Good Faith at the Stage of Contract Formation:

Good faith at the stage of contract formation encompasses all obligations and principles applicable during the stage of preliminary negotiations, but it also takes on additional features of its own, which become apparent in the conduct of the parties when signing the contract and preparing the final terms for the conclusion of the agreement.

Good Faith at the Stage of Contract Performance:

Good faith at the stage of contract performance means that the parties are required to perform what they have agreed upon with integrity, honesty, and trustworthiness, without resorting to deception, misleading conduct, or concealment of facts. It reflects the practical and obligational aspect of the principle of good faith and demonstrates its binding dimension, as it requires each party to act responsibly, respect the contractual obligations, and refrain from exploiting the contract to obtain unfair benefits or cause harm to the other party. This obligation

³⁹ Abed Mohammad, Karim Pour, Ali Abad Amin, *Social Justice in Contracts: An Analysis of the Abuse of Emergency Conditions in Adhesion Contracts in Iran*, op. cit., p. 21.

⁴⁰ Gao Xi Yang, Ross P. Buckley, 1386 [2007–2008], “A Comparative Study of the Rule of Fraud and Its Standard in the Law of Letters of Credit,” *Legal Journal*, Publication of the Center for International Legal Affairs, Legal and Parliamentary Affairs of the Presidency of the Republic, No. 36, pp. 322–243.

⁴¹ Yahya Ebrahimi, 1388 [2009–2010], “A Comparative Study of the Concept of Good Faith and Its Effects on the Formation, Interpretation, and Performance of Contracts,” *International Legal Journal*, Publication of the Center for International Legal Affairs, Presidency of the Republic, Vol. 26, No. 41, p. 66.

⁴² Musa Rahimi and Reza Rahimi Dahreni, *Good Faith in Contracts (with a Jurisprudential Approach)*, Research Work, n.d., p. 160.

ensures that the contract proceeds in accordance with its terms, achieves its legitimate objectives, strengthens mutual trust between the parties, and preserves the stability of contractual relationships.⁴³

Good Faith in Contract Interpretation:

Contractual rights and obligations based on good faith acquire particular importance when one of the parties has specific powers under the contract, such as the right to terminate the contract, approve the performance and terms proposed by the other party, or negotiate amendments to the contract. In such cases, the holder of the right may not unreasonably refuse to approve the terms, refuse to negotiate, or exercise the right of termination in circumstances that may cause serious harm to the other party without obtaining a substantial benefit for themselves. When interpreting these rights and powers, the court is required not to violate the principle of good faith. For this reason, whenever the contract contains general powers.

The Role of the Principle of Freedom of Contract in Protecting Rights and Preventing Abuse:

The principle of freedom of contract is rooted in classical thought in the eighteenth and nineteenth centuries and developed in the context of political and economic transformations in Europe, particularly under the influence of the teachings of liberal economics and individualist philosophy. Within this framework, the contract is regarded as a reflection of the will of the parties. Therefore, freedom of will is not limited to concluding the contract; rather, it also encompasses determining its terms, the methods of its performance, and even its termination, making it an essential element in regulating contractual relationships.⁴⁴

Second: The Role of Presumptions and the Circumstances Surrounding the Contract in Interpretation:

In a legal system, the interpretation of contracts is not limited to analyzing the express wording of the contract; rather, it extends to the surrounding circumstances, custom, and conduct that preceded, accompanied, or followed the conclusion of the contract, in order to ascertain the true intention of the contracting parties, which may not be accurately reflected in the apparent wording. When contractual provisions are ambiguous or unclear in some respects, it becomes necessary for the judge to examine the broader meaning arising from the parties' intention. In the specific sense, however, interpreting a contract means determining its nature, clarifying its content, identifying its parties, and ascertaining its legal effects and the obligations it creates, in a manner that achieves consistency between the intention of the contracting parties and the requirements of legal justice.⁴⁵

As for the Iranian legislative and judicial policy concerning the interpretation of contracts, the interpretation of contracts under Iranian law, particularly under the Civil Code, is one of the most important subjects within the scope of private law. The primary objective of contractual interpretation is to ascertain the parties' common intention, which is clearly reflected in Article (1156) of the Civil Code. The principles of interpretation under Iranian law regard contractual interpretation within the Iranian legal system as an essential means of understanding the parties' intentions and ensuring their proper implementation. Its role is not limited to ascertaining the intention of the contracting parties; rather, it extends to preserving public order and achieving justice in contractual relations, based on custom, supplementary rules, and legal principles.

This is particularly evident in Articles (220), where the legislator's concern with the social dimension of contracts and the necessity of safeguarding public interests are reflected. This provision requires the parties to comply not only with what has been expressly stipulated, but also with everything that custom or law regards as inherent in the contract; and (224) of the Civil Code, which confirms that the customary meaning of words constitutes the basis and foundation for the interpretation of contracts. It is used as a legal instrument to remove ambiguity from contractual provisions by referring to the meaning ordinarily attributed by people to those words. Contractual interpretation therefore relies on the customary meanings of words and the effects of custom and practice. The need for interpretation becomes particularly significant where there is ambiguity, silence, or inconsistency among the provisions of the contract⁴⁶, and Article 225 further provides that where certain matters or provisions that

⁴³ Musa Rahimi and Reza Rahimi Dahsuri, *Good Faith in Contracts*, op. cit., p. 165.

⁴⁴ Mostafa Herati, 1404 [2025–2026], "The Conflict between the Principle of Freedom of Contract and Public Order Requirements in Private and Government Contracts under French and Iranian Law," Research Article, Department of Private Law, Faculty of Law, University of Religions and Denominations, Qom, Iran, p. 88.

⁴⁵ Mostafa Javaheri, 2018, "Jurisprudential and Legal Interpretation of Contracts in Judicial Practice," paper presented at the National Conference on Studies and Scientific Research in the Humanities, organized by the Law-Yar Institute with the moral support of the Islamic Azad University, Kermanshah Branch, Conference Year, p. 4.

⁴⁶ Article 224 of the Iranian Civil Code provides: "The words of contracts shall be construed according to their customary meanings, unless it is established that the intention of the parties was a different meaning."

custom or established practice regards as forming part of the contract have not been expressly stated in the contract, they shall be treated as though they had been expressly included.⁴⁷

The second requirement: Interpretation in Islamic Jurisprudence in Supporting Interpretive Approaches

The Three Cases of Interpretation under Iranian Law: The interpretation of contracts under Iranian law faces both theoretical and practical challenges due to the absence of a specific and clear rule establishing the legal basis for interpretation. While the legislator emphasizes the necessity of adhering to written laws, considerable latitude is nevertheless left to the judge to apply general and customary principles where the legal provisions are deficient or ambiguous.

Article 3 of the Iranian Civil Procedure Code⁴⁸ provides that judicial courts are required to hear cases in accordance with explicit laws and to issue judgments or settle disputes. However, where the national laws are incomplete, unclear, or contradictory, or where there is no legal provision governing the matter in question, the law requires the courts to rely on the spirit and provisions of the national laws, as well as established judicial practice and prevailing custom, in resolving the dispute.

Similarly, Article 167 of the Iranian Constitution⁴⁹ provides that the judge must seek to render judgment in accordance with written laws and, where no clear provision exists, may rely on authoritative Islamic sources or reliable fatwas. These two provisions complement one another, as Article 167 cannot be interpreted as preventing the judge from relying on custom or as removing written law from the list of fundamental sources for judicial decision-making.

Accordingly, it becomes apparent that the Iranian legal system combines adherence to legal provisions with flexibility in relying on general and customary principles to fill legal gaps. It is necessary to distinguish between the interpretation of law and the interpretation of a contract. In contractual interpretation, the judge focuses on sources specific to the parties, such as their intention and their express and implied will. By contrast, in the interpretation of law, general and social interests are taken into consideration, with the objective of protecting public order and achieving comprehensive justice.

The practical circumstances that necessitate resorting to contractual interpretation may be summarized into three principal cases:⁵⁰

Ambiguity in Contractual Provisions:

Ambiguity refers to a lack of clarity or complexity in language, while brevity may be considered synonymous with it and refers to expressing something in a concise and general manner. In legal terminology, an ambiguous expression is one whose meaning is not clearly apparent and which is capable of bearing more than one meaning, making it difficult to determine the intention of the contracting parties. An ordinary person may therefore encounter difficulty in deriving a specific meaning from the words and phrases used.

Incompleteness and Silence of the Parties:

Incompleteness refers to the absence of certain rights or obligations from the contract as a result of the contracting parties' failure either to agree upon them or to expressly provide for them. Silence, on the other hand, arises when both parties refrain from mentioning matters that are customarily understood to form part of the contract, thereby creating a need to determine the parties' intention. Contradiction refers to a conflict between the contents of two or more provisions such that they cannot be performed simultaneously. In such cases, the judge is required to apply the principles of contractual interpretation in order to resolve ambiguity and contradiction and ascertain the parties' intention. The contract must be considered in its entirety, and no provision should be disregarded, since the contract constitutes an integrated whole. Reconciling conflicting provisions may be possible in accordance

⁴⁷ Article 225: If, in a contract, certain matters that custom or established practice understands to form part of the contract have not been mentioned, they shall be deemed to have been mentioned in the contract.

⁴⁸ Article 3 of the Iranian Civil Procedure Code: "Judicial courts are required to hear cases in accordance with the laws and to issue judgments or resolve disputes. Where the national laws are incomplete or unclear, or contradictory, or where there is no legal rule governing the matter at issue, the courts shall render judgment in accordance with the spirit and provisions of the national laws and established judicial custom and practice."

⁴⁹ Article 167 of the Iranian Constitution: "The judge is required to endeavor to determine the judgment in every case on the basis of codified laws, and where this is not possible, to issue a judgment in the case by relying on authoritative Islamic sources or authoritative fatwas."

⁵⁰ Mostafa Javaheri, *Jurisprudential and Legal Interpretation of Contracts in Judicial Practice*, aforementioned source, pp. 7–9.

with the customary practices of the contracting parties, thereby ensuring the validity and effectiveness of all of the contract's terms and contents.

The Existence of Contradictions between Contractual Provisions:

A contradiction between contractual provisions means that some provisions cannot all be performed simultaneously because the performance of one provision conflicts with another. For example, the first provision may require the delivery of an item on a particular day, while the second provision prohibits delivery on that same day.

As for Article 230 of the Iranian Civil Code, where a contract contains a specific provision determining the amount of compensation payable in the event of non-performance of an obligation, the judge is not authorized to increase or reduce that amount and must adhere to what the parties have agreed upon. This provision aims to protect the principle of freedom of contract and to ensure predictability and certainty in contractual relations.⁵¹

CONCLUSION:

The study concludes that the legal basis for contractual interpretation in Iraqi and Iranian legislation rests on reconciling respect for the parties' true intention with adherence to statutory provisions, while having recourse to custom and Islamic jurisprudence in cases of ambiguity, incompleteness, or contradiction.

First: Findings:

Iraqi and Iranian law agree in treating the intention of the contracting parties as a fundamental consideration in contractual interpretation. However, Iraqi law expresses this approach more directly through Article (155) of the Iraqi Civil Code, which gives precedence to the purposes and meanings of the contract over its wording and formal expressions. In Iranian law, by contrast, this approach is reflected through the combination of the principle of consent and intention under Article (190) and the interpretation of contractual terms according to their customary meanings under Article (224), while allowing the parties' intention to be established as having a different meaning.

The two legal systems differ in the degree of clarity with which the rules of contractual interpretation are legislatively regulated. The Iraqi Civil Code contains a relatively coherent and direct set of provisions governing the interpretive process, particularly Articles (155, 156, 163, 164, and 165). The Iranian Civil Code, by contrast, does not provide a separate and comprehensive framework for contractual interpretation. Instead, its interpretive rules are dispersed across several provisions, most notably Articles (219, 220, 224, and 225), making the Iranian interpretive framework more dependent on the interaction and complementarity of these provisions.

The Iraqi and Iranian legal systems agree in recognizing custom as a means of determining the content of the contract and supplementing matters on which the contracting parties have remained silent. However, Iraqi law gives custom a more explicit role through the rule that "what is customary is equivalent to an expressly stipulated condition" and the rule that "custom is authoritative," whereas Iranian law relies primarily on Articles (224) and (225), which establish customary meaning as the basis for understanding contractual terms and incorporating matters that custom regards as inherent in the contract.

Islamic jurisprudence appears in both legal systems as an important source guiding contractual interpretation, but to varying degrees. In Iraqi law, jurisprudential principles are clearly reflected in a number of rules governing contractual interpretation, particularly those relating to custom, practice, purposes, and meanings. The Iranian legal system, however, accords Islamic jurisprudence a more explicit and direct constitutional status, as Article (167) of the Iranian Constitution permits the judge to refer to authoritative Islamic sources and reliable fatwas where it is not possible to reach a ruling on the basis of codified laws.

Both legal systems agree that the judge's authority to interpret a contract is not unlimited. The judge remains bound by the intention of the contracting parties and the applicable legal provisions and may not undermine the binding force of the contract. Iranian law, however, expressly reinforces this limitation through Article (230), which prohibits the judge from increasing or reducing the amount of agreed compensation. In Iraqi law, this limitation is reflected through respect for the purposes and meanings of the contract and the general rules governing its binding force, as well as the prohibition against transforming interpretation into an amendment of the contract's substance.

The comparison reveals that the Iraqi model tends to rely on more direct and detailed statutory rules of interpretation, whereas the Iranian model tends to combine statutory provisions, custom, and Islamic jurisprudence in shaping the interpretive process. Accordingly, it may be said that the distinctive feature of Iraqi law lies in the clarity and coherence of its interpretive rules, while the distinctive feature of Iranian law lies in the multiplicity and interconnectedness of its sources of interpretation, thereby giving the judge greater latitude

⁵¹ Article 230: "If the amount of damages in the event of non-performance has been determined in the contract, the judge may not award an amount greater or less than the amount agreed upon."

to address ambiguity, incompleteness, and contradiction in contracts within the limits established by contractual intention and law.

RECOMMENDATIONS:

The study recommends that the Iraqi legislator develop the provisions governing contractual interpretation and bring them together within a more integrated and coherent legislative framework.

The study recommends that the Iranian legislator establish a more detailed and independent framework for the rules of contractual interpretation within the Civil Code, rather than distributing them across multiple provisions, while clarifying the relationship between contractual intention, customary meaning, and Islamic jurisprudence.

The study recommends that the Iraqi and Iranian legislators jointly strengthen the safeguards preventing judicial interpretation from becoming a means of modifying the contract or creating new obligations for the contracting parties, while establishing clear criteria for addressing cases of ambiguity, incompleteness, and contradiction between contractual provisions.

The study recommends strengthening the consistency of judicial approaches in both countries by drawing on established principles in judicial practice, legal scholarship, and commercial and professional custom, and by issuing interpretive principles or guidelines to assist judges and contracting parties in determining the proper meaning of contracts, while taking into account the particularities of each legal system.

REFERENCES

1. Ahmed Mohammed Ahmed Al-Zain, Rules of Custom in Light of the Civil Code, Department of Private Law, College of Law, Shendi University, Sudan.
2. Ramadan Mohammed Abu Al-Saud, Principles of Obligations in Egyptian and Lebanese Law, University Publishing House, 1984.
3. Suhair Hassan Hadi, Legal Rules on Contractual Interpretation, University of Babylon, College of Education for Pure Sciences.
4. Abdel Moneim Farag Al-Sadda, 1958, Lectures on Civil Law (The Theory of Contract in the Laws of the Arab Countries), Vol. 1, Consent, Cairo.
5. Fawzi Kadhimi Al-Miyahi, 2016, The Iraqi Civil Code: Its Approaches, Understanding, and Controls, Theory of Named Contracts, Part Two, Al-Sama Press, Baghdad.
6. Mohammed Siddiq Mohammed Abdullah, 2012, The Objectivity of Contractual Intention: A Comparative Analytical Study, Dar Al-Kutub Al-Qanuniyya, Cairo, Egypt.
7. Mustafa Al-Zalam, Lectures on the Theory of Obligation in Islamic Jurisprudence, University of Baghdad, publication year not provided.
8. Second: Research Papers and Journals
9. Subhi Awda Mohammed, 2022, "The Theory of Custom in Islamic Jurisprudence," Contemporary Islamic Studies, No. 34, December, University of Karbala, College of Islamic Sciences.
10. Tariq Abdul Razzaq Saeed, 2017, "The Role of Custom in Filling Legislative Gaps: A Comparative Study with Islamic Sharia," Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, No. 2, Year 9.
11. Ismat Abdul Majeed Bakr, 2011, The General Theory of Obligations, Part One, Cihan Private University Publications, 1st ed., Erbil.
12. Ala' Al-Din Abu Bakr ibn Mas'ud Al-Kasani, 1986, Bada'i Al-Sana'i fi Tartib Al-Shara'i, 2nd ed., Beirut, Dar Al-Kutub Al-Ilmiyyah.
13. Umairi Safwan Mohammed Ahmed, 2024, "Problems of Contract: A Comparative Study," Al-Shara'i Journal for Legal Studies, Vol. 4, No. 4, College of Law, University of Tikrit.
14. Kadhimi Hammadi Yousif, 2019, "The General Theory of Implied Intention: A Comparative Study," Journal of Legal Sciences, College of Law, University of Baghdad, Special Issue No. 5 (Faculty Research with Graduate Students).
15. Third: Legislation
16. The Constitution of Iran.
17. The Iranian Maritime Code, approved on 29/06/1343. Archived from the original on 7 July 2019.
18. The Iraqi Civil Code.
19. The Iranian Civil Code.
20. Fourth: Judgments and Decisions
21. Decision of the Iraqi Court of Cassation, No. 165 – Civil – 1968, issued on 22 September 1968.
22. Decision of the Iraqi Court of Cassation, No. 1718 – Civil – 1962, issued on 18 December 1963
23. Eftekhari Jahromi, Godarz, and Khorasani, Seyyed Ali, 1396, "An Explanation of the Principles and Rules of Commercial Procedure and an Evaluation of Their Efficiency from the Perspective of the Economic Analysis of Law," Comparative Law Studies, Vol. 8, No. 1.

24. Parvin, Kheyrallah, and Mabsari, Behnam, 1386, "An Examination of the Relationship between Legal Interpretation and the Interpretive Opinions of the Guardian Council," *Quarterly Journal of Public Law Studies*, Year 74, No. 2.
25. Jafari Langroudi, Mohammad Jafar, 1378, *Comprehensive Guide to Legal Terminology*, Vol. 3, Tehran: Ganj Danesh.
26. Abed Mohammad, Karim Pour, and Ali Abad Amin, 1404, "Social Justice in Contracts: An Analysis of the Abuse of Emergency Clauses in Adhesion Contracts in Iran," Research Article, Department of Law and Jurisprudence, Institute for Research and Development in the Humanities, Organization for Research and Compilation of Humanities Books (SAMT), Tehran, Iran; Department of Law, Islamic Azad University, Yasuj Branch.
27. Ali Jafari, "The Principle of Good Faith in Contracts: A Jurisprudential and Legal Examination," Institute of Jurisprudential and Legal Research.
28. Farahzadi, Ali Akbar, and Shamsi, Javad, 1398, "The Role of the General Principle in the Interpretation of Contracts," *Private Law*, University of Judicial Sciences, Vol. 3, No. 9, Serial No. 9, Winter.
29. Gao X. Yang and Ross P. Buckley, 1386, "A Comparative Study of the Rule of Fraud and Its Standard in the Law of Letters of Credit," *Legal Journal*, publication of the Center for International Legal Affairs, Legal and Parliamentary Affairs Office of the Presidency, No. 36.
30. Masoud Ansari and Mohammad Ali Taheri, 1384, *Encyclopedia of Private Law*, Vols. 1 and 2, 1st ed., Tehran: Mehrab Fekr Publications.
31. Mostafa Javaheri, 2018, "Jurisprudential and Legal Interpretation of Contracts in Judicial Practice," paper presented at the National Conference on Studies and Scientific Research in the Humanities. Conference organized by the Lawyar Institute, with the academic support of Islamic Azad University, Kermanshah Branch. Year of the conference.
32. Mostafa Herati, 1404, "The Conflict between the Principle of Freedom of Contract and the Requirements of Public Order in Private and Government Contracts under French and Iranian Law," Research Article, Department of Private Law, Faculty of Law, University of Religions and Denominations, Qom, Iran.
33. International Institute for the Unification of Private Law (UNIDROIT), *Principles of International Commercial Contracts*, translated by Dr. Behrouz Akhlaghi and Farhad Emami.
34. Mousa Rahimi and Reza Rahimi Dehsouri, "Good Faith in Contracts: A Jurisprudential Approach," Research Work, undated.
35. Yahya Ebrahimi, 1388, "A Comparative Study of the Concept of Good Faith and Its Effects on the Formation, Interpretation, and Performance of Contracts," *International Legal Journal*, publication of the Center for International Legal Affairs, Presidency, Year 26, No. 41.